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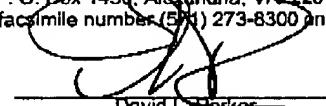
## FULBRIGHT &amp; JAWORSKI L.L.P.

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February 18, 2005

CERTIFICATE OF FACSIMILE TRANSMISSION 37 C.F.R. § 1.8
<p>I hereby certify that this correspondence is being transmitted to:          Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313, Attn:          William R. Dixon, TC 1600, facsimile number (703) 273-6300 on the date          below:</p> <div style="text-align: center; margin-top: 10px;"> <span style="border-bottom: 1px solid black; display: inline-block; width: 150px; height: 1em; vertical-align: middle;">February 18, 2005</span>  <span style="margin-left: 10px;">Date</span> <span style="margin-left: 100px;"></span> <span style="margin-left: 100px;">David L. Parker</span> </div>

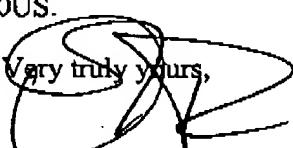
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

*Re: SN 09/982,113 entitled "A METHOD TO INCORPORATE N-(4-HYDROXYPHENYL) RETINAMIDE IN LIPOSOMES" by Lopez-Berestein et al.  
Our ref: UTSC:660US Client ref: MDA00-030*

Commissioner:

Enclosed for filing in the above-referenced patent application is a Request for Reconsideration of Decision on Petition to Group Director Pursuant to 37 C.F.R. §§1.127 and 1.181.

Should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct said fees from Fulbright & Jaworski L.L.P. Account No.: 50-1212/UTSC:660US.

  
Very truly yours,  
David L. Parker  
Reg. No. 32,165

DLP/lid  
Enclosures

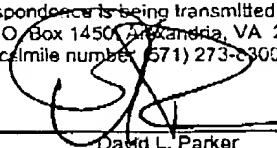
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PAGE 2/4 \* RCVD AT 2/18/2005 4:40:55 PM [Eastern Standard Time] \* SVR:USPTO-EFXRF-1/25 \* DNIS:2738300 \* CSID:512 536 4598 \* DURATION (mm:ss):01:20

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:  
 Lopez-Berestein et al.

Serial No.: 09/982,113

Filed: October 17, 2001

For: A METHOD TO INCORPORATE N-(4-HYDROXYPHENYL) RETINAMIDE IN LIPOSOMES

Group Art Unit: 1615

Examiner: Kishore, Gollamudi S.

Atty. Dkt. No.: UTSC:660US

**REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO GROUP DIRECTOR PURSUANT TO 37 C.F.R §§1.127 AND 1.181**

Commissioner for Patents  
 P. O. Box 1450  
 Alexandria, VA 22313-1450

Commissioner:

Appellants hereby request reconsideration of the Petition Decision of the group director in the referenced matter, mailed January 26, 2005, for the reasons detailed below.

In the subject decision, the Group Director reviewed the background facts, and concluded that the Examiner's refusal to enter the amendment to base claim 54 was proper. In arriving at this decision, the Group Director found that the amendment to claim 54:

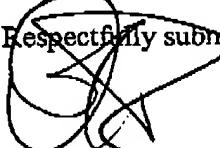
...would have been proper if it were not that dependent claim 141 states that the "lipid material comprises DMPC, SO and water". Claim 141 clearly adds material not found in claim 54, thus raising a consideration under 35 U.S.C. 112, second paragraph.

25504069.1

However, the Group Director is requested to observe that claim 141 was *already of record in this case and has been under active examination since November, 2003*. So claim 141 itself cannot raise an issue under section 112, second paragraph as it has been considered by the examiner previously and presumably found to be free of section 112 second paragraph concerns (or at least none were previously raised).

Stating the situation another way, Appellants attempted to narrow the scope of claim 54 after final by limiting *claim 54* to cover the subject matter of previous claim 138 – wherein the lipid material comprises elements A and B – and claim 138 was canceled. The Group Director apparently agreed that this was appropriate except for the presence of claim 141 – which was directed to the lipid material comprising elements A, B and C – in other words, pre-existing claim 141 was a further narrowing of claim 54. However, since claim 141 has been in the case and under active examination for some time it cannot raise “new” section 112, second paragraph concerns.

Accordingly, the Group Director is requested to instruct the Examiner to enter the amendment after final and proceed with the current appeal based on the claims following such amendment.

  
Respectfully submitted,  
\_\_\_\_\_  
David L. Parker  
Reg. No. 32,165  
Attorney for Applicants

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